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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-----------------------|---------------------|------------------|
| 10/085,606  | 02/26/2002  | Michael Karl Gschwind | YOR920020001US1     | 8683             |
| 24299   | 7590        | 12/28/2004            | EXAMINER            |                  |
| <b>George Sai-Halasz</b><br>145 Fernwood Dr.<br>Greenwich, RI 02818 |             |                       |                     | MEONSKE, TONIA L |
|   |             | ART UNIT              |                     | PAPER NUMBER     |
|   |             | 2183                  |                     |                  |

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/085,606             | GSCHWIND ET AL.     |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Tonia L Meonske        | 2183                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 20 October 2004.
- 2a) This action is FINAL.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-27 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-27 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-6, 9, 11, 12, 14-19, 22, 24, 25, and 27 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Hum et al., US Patent 6,594,730.
3. The rejections are respectfully maintained and incorporated by reference as set forth in the last office action, mailed on August 3, 2004.
4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 10, 13, 14, 23, and 26 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bain, Jr. et al., US Patent 4,829,425.
6. The rejections are respectfully maintained and incorporated by reference as set forth in the last office action, mailed on August 3, 2004.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 7 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bain, Jr. et al., US Patent 4,829,425, in view of Wulf et al., US Patent 6,154,826.

9. Claims 8 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hum et al., US Patent 6,594,730, in view of Taniani et al., US Patent 5,655,114.

10. The rejections are respectfully maintained and incorporated by reference as set forth in the last office action, mailed on August 3, 2004.

#### *Response to Arguments*

11. Applicant's arguments filed August 3 2004 have been fully considered but they are not persuasive.

12. On page 5, Applicant argues in essence:

*"The OA states regarding claim 1 of the PI that Hum et al. teaches "a classification logic adapted for prioritizing instructions...; a plurality of instruction queues...; an issue logic..." Applicant respectfully submits that Hum et al. teaches no such matters; since the patent 6,594,730 to Hum et al. is directed toward memory controllers, namely how to manage traffic to and from memory, and it says nothing as regard to instructions. In fact even the word "instruction" itself does not appear a single time in Hum et al."*

However, the fact that the Hum et al. reference may not mention the specific word "instruction" is irrelevant. The queues of Hum et al. receive and buffer data requests for processing (column 2, lines 12-21). According to the Modern Dictionary of Electronics, an instruction is defined as "Information which, when properly coded and introduced as a unit into a digital computer, causes the computer to perform one or more of its operations." In the case of Hum et al., a data request, which must inherently be coded

and introduced as a unit into a digital computer, causes the computer to perform one of its operations, that of a data request. Therefore a data request of Hum et al. is equivalent to an instruction of claim 1. Therefore this argument is moot.

13. On page 5, Applicant argues in essence:

*"Hum et al. do teach queues, as various queues can be found in computer science from the earliest days, but Hums queues do not contain decoded instructions, but contain memory traffic flow."*

Applicant is arguing a feature of the invention not specifically stated in the claim language, which is improper. Claimed subject matter, not the specification, is the measure of invention. Limitations in the specification cannot be read into the claims for the purpose of avoiding the prior art. *In re Self*, 213 USPQ 1,5(CCPA 1982); *In re Priest*, 199 USPQ 11,15 (CCPA 1978).

"It is the claims that measure the invention." *SRI Int'l v. Matshshita Elec. Corp.*, 775 F.2d 1107, 1121, 227 USPQ 577, 585 (Fed. Cir. 1985) (en banc).

"The invention disclosed in Hiniker's written description may be outstanding in its field, but the name of the game is the claim." *In re Hiniker Co.*, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998).

"[A]s an initial matter, the PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification." *In re Morris*, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

"limitations appearing in the specification will not be read into the claims, and ... interpreting what is meant by a word in a claim 'is not to be confused with adding an extraneous limitation appearing in the specification, which is improper'." *Intervet Am., v. Kee-Vet Labs.*, 12 USPQ2d 1474, 1476 (Fed. Cir. 1989)(citation omitted).

"it is entirely proper to use the specification to interpret what the patentee meant by a word or phrase in the claim, ... this is not to be confused with adding an extraneous limitation appearing in the specification, which is improper. By 'extraneous,' we mean a

limitation read into a claim from the specification wholly apart from any need to interpret ...particular words or phrases in the claim." In re Paulsen, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994) (citation omitted).

In this case, Applicant has not claimed that the queues contain decoded instructions. The fact that Hum et al.'s queues may not contain decoded instructions is irrelevant. Therefore this argument is moot.

14. On page 6, Applicant argues in essence:

*"Hum et al. does not have a "a classification logic" even for its data; note that lines 11 120, and 130 enter the queues directly, without any previous ordering of specialized logic. Furthermore, although Arbiters 170 and 200 in Hum et al. must possess some issue logic, this logic has to deal with memory access, and can't possibly even remotely resemble the "an issue logic operably coupled to said plurality of queues..." of claim 1 and 14 of the PI, which issue logic has to dispatch instructions in an optimized manner to the processor core for execution."*

Once again, Applicant is arguing a feature of the invention not specifically stated in the claim language, which is improper. Claimed subject matter, not the specification, is the measure of invention. Limitations in the specification cannot be read into the claims for the purpose of avoiding the prior art. In re Self, 213 USPQ 1,5(CCPA 1982); In re Priest, 199 USPQ 11,15 (CCPA 1978).

"It is the claims that measure the invention." SRI Int'l v. Matshshita Elec. Corp., 775 F.2d 1107, 1121, 227 USPQ 577, 585 (Fed. Cir. 1985) (en banc).

"The invention disclosed in Hiniker's written description may be outstanding in its field, but the name of the game is the claim." In re Hiniker Co., 47 USPQ2d 1523, 1529 (Fed. Cir. 1998).

"[A]s an initial matter, the PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification." In re Morris, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

"limitations appearing in the specification will not be read into the claims, and ... interpreting what is meant by a word in a claim 'is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.' Intervet Am., v. Kee-Vet Labs., 12 USPQ2d 1474, 1476 (Fed. Cir. 1989)(citation omitted).

"it is entirely proper to use the specification to interpret what the patentee meant by a word or phrase in the claim, ... this is not to be confused with adding an extraneous limitation appearing in the specification, which is improper. By 'extraneous,' we mean a limitation read into a claim from the specification wholly apart from any need to interpret ... particular words or phrases in the claim." In re Paulsen, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994) (citation omitted).

In this case, Applicant has not specifically claimed "issue logic to dispatch instructions in an optimized manner to the processor core for execution". Therefore this argument is moot.

15. On pages 6 and 7, Applicant argues in essence:

*"Applicant respectfully suggests that just as Hum et al., Bain et al. teaches in a completely different direction than the PI. ... There is not even a hint here regarding prioritizing and ordering instructions inside a processor. ... What Bain et al. are doing is that using this instruction set they are queuing and directing bus traffic, not unlike Hum et al. do with memory traffic. The OA states: "a classification logic adapted for prioritizing instructions in relation to one another and sorting said instructions in a number of priority categories (column 15, lines 30-40, Low priority instructions are classified in the low priority queue and the high priority instructions are classified in the high priority queue.)" In column 15, line 30-40 Bain et al. described the workings of their local bus sequencer instructions – and not the queuing of instructions themselves – even putting the access request queues under programmer control."*

However, Bain et al. have taught queuing instructions. According to the Modern Dictionary of Electronics, an instruction is defined as "Information which, when properly coded and introduced as a unit into a digital computer, causes the computer to perform one or more of its operations." The access requests of Bain et al. which are inherently coded and introduced as a unit into a digital processor, cause the processor to perform one of its operations, that of a memory access request. The memory access requests of Bain et al. are equivalent to the claimed instructions. Therefore, Bain et al. have taught

queueing instructions, or memory access requests, into low and high priority queues (column 15, lines 30-40). Therefore this argument is moot.

16. On page 7, Applicant argues in essence:

*"Bain et al. too, do teach queues, as various queues can be found in computer science from the earliest days, but Bain's high and low priority queues do not contain differing instructions as yet to be executed, but contains results of already executed memory access transactions."*

Again, according to the Modern Dictionary of Electronics, an instruction is defined as "Information which, when properly coded and introduced as a unit into a digital computer, causes the computer to perform one or more of its operations." The memory access requests of Bain, Jr. et al. cause the computer to perform one of its operations, a memory access request. Therefore the memory access requests of Bain et al. are instructions, which are executed when the data is retrieved from memory. Thus the memory requests stored in the high and low priority queues of Bain et al. do contain instructions, or memory requests, for execution. Therefore this argument is moot.

### ***Conclusion***

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

18. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

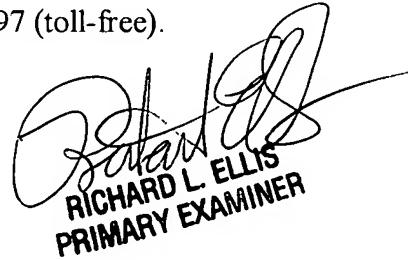
however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tonia L Meonske whose telephone number is (571) 272-4170. The examiner can normally be reached on Monday-Friday, 8-4:30.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eddie P Chan can be reached on (571) 272-4162. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tlm



RICHARD L. ELLIS  
PRIMARY EXAMINER